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### REGION III

IN THE MATTER OF:

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not admit to any of the factual or legal conclusions or determinations made by EPA herein and reserves all rights and defenses which the Respondent may have regarding liability or responsibility in any subsequent proceeding regarding this Site other than in proceedings to enforce this Order.

## II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent are: (1) to determine fully the nature and extent of the contamination at the Du Pont Newport Site ("Remedial Investigation"); (2) to determine the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from the Du Pont Newport Site ("Endangerment Assessment"), and (3) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants from the Du Pont Newport Site ("Feasibility Study"). The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.68, at Section 300.68(f) and remedial activities that utilize permanent solutions and alternative treatment technologies to the maximum extent practicable. In evaluating the alternatives, the Respondent shall address the factors required to be taken into account by Section 121 of SARA. The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the NCP.

## III. FINDINGS OF FACT

EPA has determined:

A. The Respondent to this Consent Order is E.I. du Pont de Nemours and Company ("Du Pont"), which has owned and operated a manufacturing plant in Newport, Delaware ("the Newport plant"), from 1929 to the present.

B. From 1902 to 1929, the Newport plant was owned by Henrik J. Krebs and used for the manufacture of Lithopone (a white pigment). In 1929, Du Pont purchased the Newport plant, continued this manufacturing and subsequently added other product lines.

C. The Newport plant is located on the Du Pont Newport Site ("Site"), which covers approximately 7 acres and is located north of the Christina River and southeast of Du Pont's Holly Run plant. The Site boundaries will be more particularly defined by the extent of contamination coming from the site, which will be determined by the Remedial Investigation.

D. The Site was used by Du Pont as a landfill for the disposal of general refuse and process wastes (including off-quality product). It is estimated to contain 25 thousand tons of material. The Site operated under

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a State of Delaware permit from 1964 until its closure in 1975 at which time the Site was capped with 2 feet of clay and graded to minimize rain water percolation.

E. After closure, several ground water monitoring wells were installed. Monitoring results indicate that the ground water under the Site is contaminated with volatile organics and heavy metals. The metals of greatest concern are cadmium, barium, and zinc. Organics include predominantly tetrachloroethylene and trichloroethylene.

F. Southwest of the Site are approximately 25 commercial establishments and private residences along Old Airport Road that utilize private ground water wells. At least 2 of the wells are shallow with depths of 20 to 25 feet.

G. The Site was proposed for the National Priorities List during January, 1987.

#### IV. CONCLUSIONS OF LAW

EPA has determined that:

A. The Newport Landfill is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

B. The Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21), and is liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

C. The substances described in paragraph III (E) are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

D. The presence of hazardous substances at the Site and the potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

#### V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

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B. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

C. The Respondent is qualified to conduct the Remedial Investigation Feasibility Study ("RI/FS") within the meaning of 104(a) of CERCLA, 42 U.S.C. § 9604(a), if the Respondent complies with Section VI of this Consent Order.

#### VI. WORK TO BE PERFORMED

A. All response work performed pursuant to this Consent Order shall be under the direction and supervision of qualified personnel. The contractor responsible for carrying out all the work under this Consent Order is Woodward-Clyde Consultants Company. The laboratory currently being used is Environmental Testing and Certification Corporation (ETC). The subcontractors currently being used are Pennsylvania Drilling Company, Pittsburgh, Pennsylvania, and Teledyne Isotopes, Westwood, New Jersey. The former is the drilling contractor and the latter will provide radiometric analyses of rock cores. If Respondent decides to replace any of these companies with different companies, it will notify EPA at least fifteen (15) working days in advance of any such proposed change. If EPA objects to the proposed replacement, Respondent will select another replacement and submit its name to EPA for approval.

B. A revised RI/FS Work Plan was submitted by Respondent. EPA had notified the Respondent in writing of EPA's disapproval of the revised Work Plan, and EPA had specified the deficiencies in writing. Within thirty (30) days of the effective date of this Consent Order, the Respondent shall amend and submit to EPA a second revised Work Plan that responds to and/or remedies the specified deficiencies. If, after such revision, EPA continues to disapprove the plan, Respondent shall incorporate EPA's proposed additions and amendments to the Work Plan and resubmit. In the event of a subsequent disapproval of the amended Work Plan, EPA reserves the right to conduct a complete RI/FS or any portion thereof pursuant to CERCLA and the NCP and to seek reimbursement from Respondent for the costs thereof. Upon approval by EPA, the Work Plan shall be incorporated into this Consent Order and the terms and schedules therein shall become requirements of this Order. If EPA exercises its right to perform the RI/FS or any portion thereof, pursuant to Section XV of this Order, Respondent will be released from its obligation under this Consent Order to perform whatever work is being undertaken by EPA. Respondent shall not be released, however, from any other obligations under this Order including, but not limited to, the obligation to pay any stipulated penalties and accrued oversight costs.

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C. Within ten (10) days after receipt by Respondent of EPA's approval of the RI/FS Work Plan, Respondent shall commence task 1 of the RI/FS Work Plan and, thereafter, implement the Work Plan in accordance with the schedule contained in such Work Plan.

D. Beginning 30 days after the effective date of EPA's approval of the Work Plan, the Respondent shall provide EPA with a progress report for each preceding 30 day period. At a minimum, these progress reports shall include: 1) a description of the actions that have been taken toward achieving compliance with this Consent Order; 2) all results of sampling, tests, analytical data and interpretations and all other information received by the Respondent; 3) a description of all data anticipated and activities scheduled for the next month; and 4) a description of any problems encountered.

E. EPA shall review the preliminary and final Remedial Investigation Reports required by the approved Work Plan and subsequently the Preliminary and Final Feasibility Studies required by the approved Work Plan. Such reports shall be submitted to EPA in accordance with the schedule contained in the approved Work Plan. Within sixty (60) days of receipt by EPA of the draft reports, EPA shall notify Respondent in writing of its approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within thirty (30) days of receipt of notification of such preliminary or final report disapproval, the Respondent shall amend and submit to EPA a revised report that responds to and/or remedies the specified deficiencies. If, after such revision EPA continues to disapprove, Respondent shall incorporate EPA's proposed additions and amendments into such preliminary or final report. In the event of subsequent disapproval of either report, EPA retains the right to amend such reports, to perform additional studies, and to complete the RI/FS or any portion thereof pursuant to CERCLA and the NCP and to seek reimbursement from Respondent for the costs thereof.

F. Failure or delay of EPA to provide Respondent with any approvals or notices within the time periods specified in this Consent Order shall not be construed or interpreted as approval by EPA of any matter.

#### VII. DESIGNATED PROJECT MANAGERS

EPA and the Respondent have each designated a Project Manager. Each Project Manager shall be responsible for overseeing implementation of this Consent Order on behalf of the designating party. To the maximum extent possible, the communications between the Respondent and EPA and all documents, including reports, approvals and and other correspondence concerning activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Managers by certified mail. EPA and Respondent shall each have the right to change their respective Project Managers. Such change shall be accomplished by notice to the other party, in writing, at least five days prior to the change. The EPA Project Manager shall have the authority inter alia, to halt, modify, conduct or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present or may present an immediate risk to public health or welfare or to the environment as set forth at 40 C.F.R §300.65(b).

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In the event that work is halted or changed under order of the EPA Project Manager pursuant to this Section VII, the schedule for completion of the work set forth in the Work Plan may be extended to the extent of such delay. The absence of the EPA Project Manager from the facility shall not be cause for the stoppage of work.

The designated EPA Project Manager is:

Gerardo R. Amador - 3HW16  
U.S. Environmental Protection Agency - Region III  
Hazardous Waste Enforcement Branch  
841 Chestnut Building  
Philadelphia, PA 19107

The designated Project Manager for the Respondent is:

Alan B. Palmer, Manager  
Safety, Health and Environment  
Chemicals and Pigments Department  
Brandywine 16270  
E. I. du Pont de Nemours and Company  
1007 Market Street  
Wilmington, Delaware 19898

#### VIII. SITE ACCESS

To the extent that portions of the area designated for study may presently be owned by parties other than those bound by this Consent Order, the Respondent has obtained or will use its best efforts to obtain Site Access agreements from the present owners within thirty (30) days of the effective date of this Consent Order. Such agreements shall provide reasonable access to EPA and/or its authorized representatives, as well as to the Respondent. In the event that the Respondent determines that it is or will be unable to obtain Site Access agreements within the time referenced above, the Respondent shall immediately notify EPA regarding inability to obtain such agreements. EPA may then take steps to provide such access.

EPA and/or any EPA-authorized representative shall have the authority to enter and freely move about all property at the Site that is the subject of the RI/FS or that is utilized for maintenance of records related to performance of the RI/FS, at all reasonable times, for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Manager deem necessary; using a camera, sound recording, or other documentary equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Documents subject to the attorney-client privilege or attorney work product privilege shall be exempt from this requirement, except, however, that no sampling and/or tests or other technical data shall be claimed as privileged.

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Nothing herein shall be interpreted as limiting the inspection authority of EPA under federal laws.

IX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

The Respondent shall make available the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent's behalf, with respect to the implementation of this Consent Order, and shall submit these results in monthly progress reports. EPA will make available to the Respondent the results of sampling and/or tests or other data similarly generated by EPA, provided, however, that all data made available by EPA shall have been verified pursuant to quality assurance/quality control procedures.

At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA, and/or its authorized representatives, of any samples collected by the Respondent pursuant to the implementation of this Consent Order. The Respondent shall notify EPA at least ten (10) working days in advance of any sample collection activity.

The Respondent may assert a confidentiality claim covering part or all of the information requested by or obtained under this Consent Order pursuant to 40 C.F.R. Section 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made pursuant to 40 C.F.R. Section 2.204(e). Analytical data shall not be claimed as confidential by the Respondent. Information subject to such a claim will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent.

X. QUALITY ASSURANCE

The Respondent shall use Quality Assurance/Quality Control practices and procedures, including chain-of-custody procedures, in accordance with guidance provided in "EPA NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA-330/9-78-001-R, and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan (unless such sampling and analysis has been completed prior to the signing of the Consent Order). In order to provide adequate Quality Assurance and Quality Control regarding all samples collected and analyzed pursuant to this Consent Order, the Respondent shall:

A. Use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

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B. Ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratory(s), records and personnel utilized by the Respondent for analysis of samples collected pursuant to this Consent Order.

C. Use a Quality Assurance Project Plan ("QAPjP"), as outlined in the attached Work Plan, for the sample collection and analysis to be conducted pursuant to this Consent Order. The QAPjP (and sampling plans if prepared as separate documents) must be submitted to the EPA Project Manager for review and approval as part of the RI/FS Work Plan required in Article VI of this Consent Order. The Plan sets forth, in detail, the data quality objectives, sample collection procedures, and data analysis processes and procedures to ensure that the objectives are met. QAMS-005/80 has been used as guidance in the preparation of the QAPjP.

D. Ensure that laboratory(s) analyzing samples required by this Consent Order shall use the methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program (CLP)". Current copies as well as copies of any other manual or guidance mentioned in Article X, are available from the Environmental Services Division ("ESD") QA Section Annapolis, Maryland at (301) 226-9180. If any parameter to be analyzed for is not one of the parameters for which CLP methods are available, the laboratory shall use methods which are EPA-approved (and which are to be described in the QAPjP).

E. Ensure that any laboratory(s) analyzing samples pursuant to this Consent Order must demonstrate its capability to perform analyses in compliance with CLP requirements through the analysis of Performance Evaluation ("PE") samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has analyzed satisfactorily PE samples submitted by EPA or a state environmental regulatory agency within the past six (6) months. Documentation of the prior PE sample analysis must be submitted to the EPA Project Manager for verification.

F. Conduct an audit of the laboratory(s) that will analyze samples from the Site at some point during the time the laboratory(s) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors should conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA Project Manager within fifteen (15) calendar days of completion of the audit. The Respondent must report serious deficiencies (anything that impacts the data quality in which significant quality control criteria has not been met) within twenty-four (24) hours of the time the Respondent knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ("CLP Labs") need not be audited.

G. Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent

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to the EPA Project Manager within fifteen (15) calendar days of completion of the audit. Respondent must report deficiencies and corrective actions to be immediately taken within twenty-four (24) hours of the time the Respondent knew or should have known of the deficiency. Corrective actions shall be immediately taken.

H. Provide data validation of analysis done by the laboratory(s) (to be described in the QAPJP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods. If another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols the Respondent must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. Section 136. The appropriate quality assurance data validation summary reports should be submitted, along with sample data and summary sheets, to the EPA Project Manager at the time final sample results are provided to EPA.

I. In the event that the Respondent fails to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to conduct a complete RI/FS or any portion thereof pursuant to its authority under CERCLA, to seek reimbursement from any responsible parties in a proceeding independent of this Consent Order and/or to seek any other appropriate relief.

#### XI. RECORD PRESERVATION

The Respondent agrees to preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in its possession, or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys relating in any way to the purpose or requirements of this Consent Order, despite any document retention policy to the contrary. After this six-year period, the Respondent shall notify EPA within 30 days prior to the destruction of any such documents. Upon request by EPA, the Respondent shall make available to EPA such records or copies of any such records. Additionally, if EPA requests that some or all of the documents be preserved for a longer period of time, the Respondent shall comply with that request.

#### XII. DISPUTE RESOLUTION

If Respondent objects to any disapproval, determination or other decision made by EPA pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objections within fourteen (14) days of receipt of written notice of such decision. EPA and the Respondent shall then have an additional 14 days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this 14-day period, EPA shall provide a written statement of its decision to the Respondent. EPA and Respondent retain their respective rights to whatever remedies, if any, are otherwise available by law.

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XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

Unless excused under the provisions of Section XIV hereof, for each week that the Respondent fails to submit a report or document or otherwise fails to achieve any requirement of this Consent Order in accordance with the time frames outlined in this Consent Order or the approved RI/FS Work Plan, the Respondent shall, upon demand, pay stipulated penalties in the amount of \$500.00 for the first week or any portion thereof, \$1,000.00 for the second week or any portion thereof, and thereafter in the amount of \$2,000.00 for each week or part thereof for each such violation. A copy of all checks for stipulated penalties assessed hereunder shall be sent to the EPA Project Coordinator. Checks should specifically reference the Site and should be made payable to "Hazardous Substances Superfund" and shall be addressed to:

United States Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251

A copy of the check and transmittal letter should be sent to the EPA Project Manager and Suzanne Canning, Office of Regional Counsel.

The stipulated penalties set forth in this Section XIII do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondent's failure to comply with any of the requirements of this Consent Order.

XIV. FORCE MAJEURE

The Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but no later than two (2) business days after any such delay or anticipated delay and in writing no later than seven (7) days after becoming aware of such delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondent (if applicable), the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

Any such delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIII, "Delay in Performance and Stipulated Penalties". To the extent a delay is caused by circumstances beyond the control of and could not be overcome by the Respondent, the schedule affected

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by the delay shall be extended for a period up to the delay directly resulting from such circumstances. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

Failure of the Respondent to comply with the notice requirements of this paragraph shall constitute a waiver of the Respondent's right to invoke the benefits of this paragraph with respect to that event.

In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of the Respondent and could not be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Dispute Resolution, Section XII of this Consent Order. The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid or minimize delay.

#### XV. RESERVATION OF RIGHTS

Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief and the imposition of statutory penalties.

The Respondent and EPA expressly reserve all rights and defenses each may have, including EPA's right both to disapprove of work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the Work Plan. In the event that the Respondent declines to perform any additional tasks, EPA reserves its rights to undertake such tasks. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondent thereafter for such costs incurred by the United States.

So long as the Respondent is proceeding in accordance with the terms of this Consent Order, EPA, subject to the reservation of rights made in this Section, hereby covenants not to institute any judicial or administrative proceeding against the Respondent to carry out the RI/FS. If the Respondent properly completes the tasks set out in the approved RI/FS work plan, EPA will give the Respondent the opportunity to undertake voluntarily, under a Consent Decree, whatever remedial steps EPA may determine to be necessary to remediate the Site.

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XVI. REIMBURSEMENT OF COSTS

A. Beginning one (1) year after the effective date of this Order, EPA shall submit to the Respondent an accounting of all response and oversight costs incurred by the United States with respect to this Consent Order. Oversight costs shall consist of all costs incurred by EPA, its agents or contractors connected with EPA's oversight of the work. Oversight costs shall include, but not be limited to, any time and travel costs incurred by EPA personnel in conducting oversight activities and time and travel costs incurred by personnel under contract to EPA to conduct oversight activities. Oversight activities may include, but are not limited to, the collection and analysis of split samples, compliance monitoring, site visits, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, review and approval of documents required under this Consent Order. Oversight costs do not include any costs of remedial work at the Site. The Respondent shall, within 30 days of receipt of that accounting, remit a check for the amount of those costs, made payable to the "Hazardous Substances Superfund". Checks should specifically reference the Site and be addressed to:

United States Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251

A copy of the transmittal letter should be sent to the EPA Project Manager.

B. EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA and the NCP at this Site. Respondent reserves its right to seek contribution from any potentially responsible party not a party to this Consent Order.

XVII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA 42 U.S.C. Section 9611(a)(2). By consenting to issuance of this Consent Order, Respondent waives any claim to reimbursement it may have under Section 106(b) of CERCLA.

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(Red)XVIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations.

XIX. PUBLIC COMMENT AND SELECTION  
OF REMEDIAL ACTION ALTERNATIVE

Upon approval by EPA of a Feasibility Study Final Report, EPA shall make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a 21-day period, pursuant to EPA's Community Relations Policy and the National Contingency Plan, 40 C.F.R. Part 300. Following the public review and comment period and signing of the Record of Decision by the Regional Administrator, EPA shall notify the Respondent which remedial action alternative is approved for the Site. Nothing herein shall obligate Respondent to implement the remedial action alternative selected by EPA.

XX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Consent Order shall be the date on which it is signed by EPA. Respondent acknowledges that it has had adequate opportunity to confer with EPA before entry of this Consent Order. This Consent Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall become effective on the date on which they are signed by EPA. Minor modifications to the requirements of the Work Plan may be made by mutual agreement of the Project Managers. Such modifications shall be made by exchange of letters by the Project Managers and shall have as an effective date the date on which the letter from EPA's Project Manager is signed.

The RI/FS Work Plan is incorporated into this Consent Order, and all terms and schedules contained therein are requirements of this Order. Any non-compliance with EPA-approved reports, plans, specifications, schedules or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject Respondent to the terms of Section XIII of this Order.

No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order.

XXI. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondent and EPA, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondent or EPA or both. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibility under this Consent Order.

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In the event of any change in ownership or control of the Site, Respondent shall notify the EPA in writing at least 30 days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site, prior to any agreement for transfer.

The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order.

XXII. NOTICE TO THE STATE

EPA has notified the State of Delaware pursuant to the requirements of Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

XXIII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be terminated upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order have been completed.

XXIV. LIABILITY OF THE UNITED STATES GOVERNMENT

Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assignees, or of any persons, including but not limited to contractors and consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities pursuant to this Order.

IT IS SO AGREED AND ORDERED:

Dated: 7/22/88

By: August T. Gentilucci  
Production Manager  
E. I. du Pont de Nemours and Company

Dated: 8/12/88

By: Stanley R. Wassersug  
Regional Administrator  
U.S. Environmental Protection Agency  
Region III

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